

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1300

H.P. 976

House of Representatives, February 28, 2001

An Act to Establish the Child Ombudsman Office and Improve Child Protective Procedures.

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative SHIELDS of Auburn.
Cosponsored by Representatives: DUGAY of Cherryfield, LOVETT of Scarborough,
NUTTING of Oakland, O'BRIEN of Augusta, SCHNEIDER of Durham, Senators: SMALL
of Sagadahoc, TURNER of Cumberland.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 22 MRSA c. 1071, sub-c. X-A** is amended by repealing the
subchapter headnote and enacting the following in its place:

6 **SUBCHAPTER X-A**

8 **CHILD OMBUDSMAN OFFICE**

10 **Sec. 2. 22 MRSA §4087**, as enacted by PL 1989, c. 400, §§7 and
12 14, is repealed.

14 **Sec. 3. 22 MRSA §4087-A** is enacted to read:

16 **§4087-A. Child Ombudsman Office**

18 **1. Office established.** The Child Ombudsman Office is
established as an independent office within the Department of
Human Services to provide ombudsman services to the people of the
State regarding all matters in which a child is receiving or
requesting services from a state agency. The office shall
consider and promote the best interests of children and their
families, answer inquiries and investigate, provide advice
regarding and work toward resolution of complaints against state
agencies that may be infringing on the rights of individuals.

26 **2. Definitions.** As used in this subchapter, unless the
context otherwise indicates, the following terms have the
following meanings.

30 **A. "Agency"** means a department or agency of the State, a
person or entity providing services under a contract with a
state department or agency, or a school administrative
unit. "Agency" does not include private individuals,
companies or organizations; federal, county or municipal
governments; institutions of higher education; elected
officials or representatives; or the Judicial Department.

38 **B. "Office"** means the Child Ombudsman Office established
under this section.

40 **C. "Ombudsman"** means the director of the office and persons
employed or volunteering to perform the work of the office.

42 **3. Contracted services.** The office must operate by
contract with a nonprofit organization that the Governor finds to
be free of potential conflict of interest and best able to
provide the services under subsection 4 on a statewide basis.
The ombudsman may not be actively involved in political party
activities or publicly endorse, solicit funds for or make

2 contributions to political parties or candidates for elective
3 office. The ombudsman may not be a candidate for or hold any
4 elective or appointive public office.

5 4. Services. The ombudsman shall provide services directly
6 or under contract and may set priorities for service among the
7 types of inquiries and complaints. The ombudsman may:

8
9
10 A. Provide information to the public about the services of
11 the office through a comprehensive outreach program and a
12 toll-free telephone number;

13
14 B. Answer inquiries and investigate and work toward
15 resolution of complaints regarding the performance and
16 services of agencies with regard to services to children and
17 participate in conferences, meetings and studies that may
18 improve the performance of agencies;

19
20 C. Provide services to persons to assist in protecting the
21 rights of children and families;

22 D. Inform persons of the means of obtaining services from
23 agencies;

24
25 E. Consider and promote the interests of children and
26 families, including participating in mediation and
27 representation of families in legal actions;

28
29 F. Provide information and referral services for children
30 and families;

31
32 G. Provide training and technical assistance to guardians ad
33 litem, special advocates and others interested in the rights
34 of children and families;

35
36 H. Analyze and provide opinions and recommendations to
37 agencies, the Governor and the Legislature on programs,
38 rules, policies and laws regarding children and families;

39
40 I. Determine what types of complaints and inquiries will
41 be accepted for action by the office and adopt policies and
42 procedures regarding communication with persons making
43 inquiries or complaints and agencies about which inquiries
44 or complaints are made;

45
46 J. Apply for and utilize grants, gifts and funds for the
47 purpose of performing the duties of the office; and
48

2 K. Collect and analyze records and data relevant to the
3 duties and activities of the office and make reports as
4 required by law or determined by the office to be
5 appropriate.

6 5. Access to persons, files and records. The ombudsman may
7 have access to the child who is the subject of an inquiry or
8 complaint if the parents or legal guardian consents; to agency
9 files and records, without fee; and to the personnel of an agency
10 for the purposes of investigation of the inquiry or complaint.
11 The ombudsman may also enter the premises of an agency for the
12 purposes of investigation of the inquiry or complaint without
13 prior notice. The ombudsman shall maintain the confidentiality
14 of all information or records obtained under this subsection.

15 6. Confidentiality of records. Information or records
16 maintained by the ombudsman relating to a complaint or inquiry
17 are confidential and may not be disclosed unless the disclosure
18 is permitted by law and consented to by the ombudsman or ordered
19 by court. Records maintained by the ombudsman are not public
20 records as defined in Title 1, chapter 13.

21 7. Immunity. Any person who in good faith submits a
22 complaint or inquiry to the office pursuant to this section or in
23 good faith investigates that complaint or inquiry as an ombudsman
24 is immune from any civil or criminal liability that otherwise
25 might result from these actions. For the purpose of any civil or
26 criminal proceedings, there is a rebuttable presumption that any
27 person acting pursuant to this section did so in good faith. The
28 ombudsman is not immune from liability for acts of gross
29 negligence or intentional wrongful acts or omissions.

30 8. Report. The ombudsman shall report to the Governor, the
31 department, the Department of Education, the Department of
32 Corrections, the Department of Mental Health, Mental Retardation
33 and Substance Abuse Services and the Legislature by January 1st
34 each year on the activities and services of the office,
35 priorities among types of inquiries and complaints that may have
36 been established by the office, waiting lists for services and
37 recommendations for changes in policy, rule or law to improve the
38 provision of services to children and families.

39 9. Oversight. The joint standing committee of the
40 Legislature having jurisdiction over health and human services
41 matters shall review the operations of the office and may make
42 recommendations to the commissioner regarding the contract for
43 services under this section. The committee may submit
44 legislation to amend or repeal this section.

2 10. Penalties. Any person who willfully obstructs or
3 hinders the lawful exercise of the ombudsman in the performance
4 of the ombudsman's duties commits a Class E crime. Any person
5 who penalizes or imposes a restriction on a person who makes a
6 complaint or inquiry to the ombudsman as a result of that
7 complaint or inquiry commits a Class E crime. The Attorney
8 General shall enforce this subsection under Title 5, section 191.

9
10 **Sec. 4. 22 MRSA §4089, sub-§1, ¶E,** as enacted by PL 1989, c.
11 819, §6, is amended to read:

12 E. ~~The child--welfare--services--ombudsman,--appointed--in~~
13 ~~accordance--with--section--4087,~~ director of the Child
14 Ombudsman Office established in section 4087-A shall serve
15 as a permanent member.

16
17 **Sec. 5. Report.** By January 31, 2002, the director of the
18 Child Ombudsman Office established in the Maine Revised Statutes,
19 Title 22, section 4087-A shall report to the Joint Standing
20 Committee on Health and Human Services on the feasibility of and
21 any action required to transfer authority for child ombudsman and
22 advocacy services and programs and the funding associated with
23 those services and programs on July 1, 2002. In compiling this
24 report, the director shall consider the services provided
25 directly or indirectly by the Department of Mental Health, Mental
26 Retardation and Substance Abuse Services; the Department of
27 Corrections, Office of Advocacy; the Department of Mental Health,
28 Mental Retardation and Substance Abuse Services, Office of
29 Advocacy and Consumer Affairs; the Department of Education; the
30 Department of Human Services; the Department of Corrections; the
31 Department of Human Services, Bureau of Elder and Adult Services,
32 Disability Rights Center; and such other agencies as the director
33 determines to be appropriate. The Joint Standing Committee on
34 Health and Human Services may submit legislation to the 120th
35 Legislature to transfer authority over child ombudsman programs
36 and services and the funding associated with those services and
37 programs to the Child Ombudsman Office.

38
39 **Sec. 6. Effective date.** This Act takes effect January 1, 2002.
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42 SUMMARY

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44 1. The bill repeals the statute that establishes the
45 unfunded Office of Child Welfare Services Ombudsman within the
46 Department of Human Services.

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48 2. The bill establishes the Child Ombudsman Office to
provide ombudsman services to children and families through a

2 contract with a nonprofit organization that the Governor finds to
3 be free of potential conflict of interest and best able to
4 provide services on a statewide basis. The office may answer
5 inquiries and investigate and work toward resolution of
6 complaints regarding services and programs for children and
7 families, may provide information, assistance and legal
8 representation services, may provide an outreach program, may
9 collect and analyze information and shall report to the Joint
10 Standing Committee on Health and Human Services.

11
12 3. The bill provides for access to records, confidentiality
13 of those records and immunity from civil and criminal liability.

14 4. The bill requires a report by January 31, 2002 on
15 transferring to the Child Ombudsman Office authority for other
16 child ombudsman and advocacy programs and services and the
17 funding associated with those programs and services. It allows
18 the Joint Standing Committee on Health and Human Services to
19 submit legislation to the 120th Legislature transferring funding
20 and authority for services to the Child Ombudsman Office.

21 5. The bill also provides criminal penalties for willfully
22 obstructing or hindering the ombudsman.

23
24 6. The bill provides an effective date of January 1, 2002.
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